

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-731

December 4, 2002

OFFICE OF THE PUBLIC ADVOCATE
Request for Commission Investigation Into
Whether CMP Ratepayers are Entitled to a
Portion of the Proceeds From Property Leased
In Dead River Township

NOTICE OF PUBLIC
ADVOCATE'S REQUEST
FOR INVESTIGATION

On November 26, 2002, the Public Advocate filed a request that the Commission open an investigation pursuant to 35-A M.R.S.A. § 1303 of a real estate transaction involving land owned and leased by Central Maine Power Company (CMP) in Dead River Township, Maine.

The Public Advocate alleges that CMP has leased 29 acres of land in Dead River Township to Western Mountain Foundation (Western). Western has filed an application with Maine's Land Use Regulation Commission (LURC) for approval to build a commercial sporting camp on the 29-acre parcel. The Public Advocate asserts that CMP acquired the 29-acre parcel during the 1940s by means of eminent domain or with the threat of eminent domain. The parcel is part of the land that CMP and its predecessor-in-title acquired to build a dam, which became known as the Long Falls Dam, and operate a reservoir and storage basin, which became known as Flagstaff Lake, to insure a continuous head of water to operate downstream hydroelectric generating stations. The Public Advocate further asserts that, in 1999, CMP sold Long Falls Dam, and all other assets that are associated with a Federal Energy Regulatory Commission (FERC) hydro license known as the Flagstaff Project, to FPL Energy Maine Hydro LLC. The "project boundary" for the dam is the 1150-foot elevation mark. According to the Public Advocate, at the east end of Flagstaff Lake, CMP retained lands above the 1150-foot mark, including the 29-acre parcel leased to Western.

As the Public Advocate concludes that CMP acquired the 29-acre parcel explicitly or implicitly by eminent domain, he urges the Commission to decide that CMP may use the land only for the public purpose for which it acquired the land, or at least for a public purpose. The Public Advocate asserts that the operation of a sports camp is not a public purpose, and asks the Commission to find that CMP must put the land to a public purpose. To conclude the matter, the Public Advocate asks the Commission to refer the matter to the Attorney General to confirm the Commission's decision in court or to the Legislature so that it may determine the proper public use for the land at this point.

Lastly, the Public Advocate asks that, if CMP is allowed to lease the parcel to Western, the Commission investigate whether any portion of the lease revenue should be reflected in determining CMP's ratemaking revenue requirement.

CMP is directed to respond to the Public Advocate's request by December 18, 2003. CMP should respond to the factual allegations made by the Public Advocate, as well as the legal and policy conclusions made by him.

BY ORDER OF THE HEARING EXAMINER

James A. Buckley